

Narrative Overview

Honorable G. Michael Westfall – District Court Judge

Serving Beaver, Iron and Washington counties



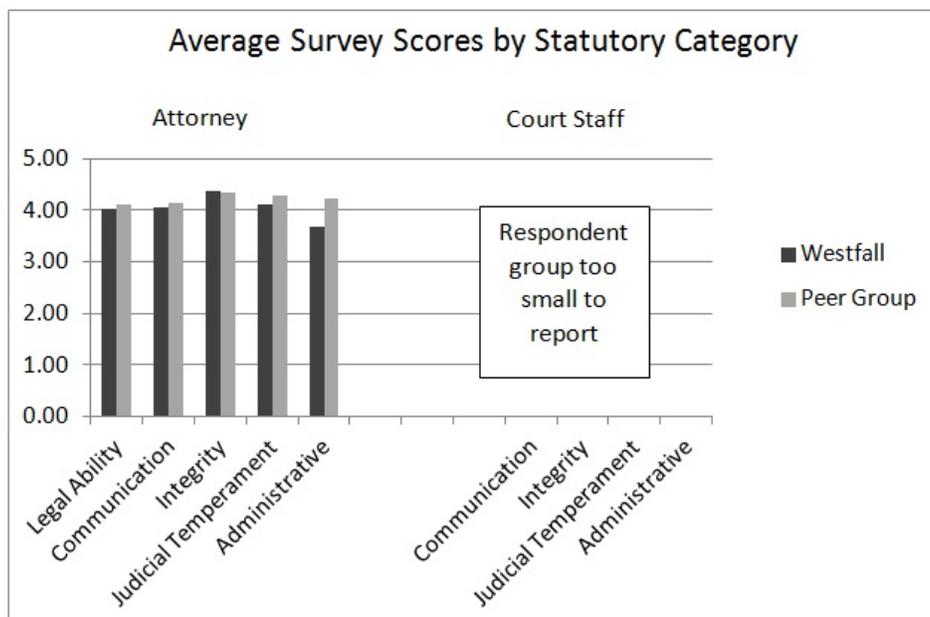
The commission recommends by a vote of 12 - 0
TO RETAIN Judge G. Michael Westfall

Judge G. Michael Westfall is an experienced judge who received solid ratings from attorneys in four of the five survey categories. Attorneys most often described him as confident, intelligent and knowledgeable. Of the 63 attorneys who responded to the retention question, 58 (93%) recommended that Judge Westfall be retained. While still exceeding the minimum performance standards, Judge Westfall scored below the average of other district court judges in administration, especially in realistically managing his calendar and respecting the time of participants. Some attorneys cited administrative changes within his district that have dramatically increased his workload, while others noted that his highly methodical, detailed style contributes to slow-moving proceedings and long hours in court. Respondents agree, however, that Judge Westfall is a very hard worker with an impeccable work ethic. Five courtroom observers lauded Judge Westfall's serious, kind demeanor, his consistently courteous and patient manner, and his thorough explanations of decisions. Juror responses were uniformly positive.

The commission reviewed surveys and courtroom observation reports in addition to verifying that Judge Westfall has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Judge G. Michael Westfall was appointed to the Fifth District Court in 2003 by Gov. Michael O. Leavitt. He graduated from B.Y.U. law school in 1981 and was a partner in the law firm of Gallian, Westfall, Wilcox and Welker prior to his appointment to the bench. Judge Westfall has been active in community organizations, including serving as chair of his local voting district and as a member of the Academy of Family Mediators. Judge Westfall served on the Utah Judicial Council for four years, serving as vice-chair during 2010-2011. He served on the Ethics Advisory Committee, was presiding judge in the Fifth District, and was president of the local Inn of Court, an organization dedicated to improving the legal profession.

This judge has met all minimum performance standards established by law.



Survey Overview

Attorneys, court staff and jurors were surveyed about the judge's performance. Survey categories included questions about the judge's legal ability, judicial temperament, integrity, communication skills, and administrative skills. Summarized results for all applicable respondent groups appear below. A judge must score a 3.0 on 80% of the individual questions to pass the minimum performance standard.

A. Attorney Survey Overview:

Total Respondents: 63

1. "Should this judge be retained?"

Response*	Number	Percent of Total
YES	58	92%
NO	5	8%

*0 Respondent(s) did not answer the retention question

2. Statutory Category Scores:

Attorney	Westfall	Peer Avg.	% of Peer
Legal Ability	4.03	4.11	98%
Communication	4.06	4.13	98%
Integrity	4.37	4.35	101%
Judicial Temperament	4.11	4.27	96%
Administrative	3.67	4.24	87%

3. Average trials before this judge: 2.3

4. Area of primary practice:

Collections: 4 Domestic: 20 Criminal: 24 Civil: 38 Other: 2

B. Court Staff Survey Overview: Respondent group too small to report

C. Juror Survey Overview:

Total Respondents: 60

1. Jurors were not asked whether a judge should be retained.

2. Statutory Category Scores:

Juror	Westfall	Peer Avg.	% of Peer
Communication	4.67	4.77	98%
Integrity	4.74	4.87	97%
Judicial Temperament	4.71	4.84	97%
Administrative	4.67	4.73	99%

Survey Scores

Attorney Survey Scores:

Below are listed: 1) the attorney survey questions; 2) a checkmark to show that the judge met or exceeded the statutory “pass” of 3.0, or an “x” to indicate the judge scored below 3.0 on that question; 3) the judge’s average score on each question; 4) the average score on each question of all judges on the same level of court; and 5) the judge’s average score as a percent of the peer group average score.

A judge must receive an average score of at least 3.0 on 80% of the questions to meet minimum performance standards.

Attorney Question	Statutory Pass: 3.0	Westfall	Peer Avg.	% of Peer Avg.
The Judge makes sound rulings.	✓	3.99	4.01	99%
The judge properly applies the rules of civil procedure.	✓	4.08	4.14	99%
The judge properly applies the rules of criminal procedure.	✓	4.19	4.14	101%
The judge properly applies the rules of evidence.	✓	4.19	4.12	102%
The judge's sentencing fits the offenses.	✓	3.98	4.01	99%
The judge makes appropriate findings of facts.	✓	4.16	4.07	102%
The judge appropriately applies the laws to the facts.	✓	4.06	4.06	100%
The judge follows legal precedent.	✓	4.10	4.12	99%
The judge only considers evidence in the record.	✓	4.04	4.08	99%
The judge's written decisions are clear and logical.	✓	4.01	4.09	98%
The judge's written opinions offer meaningful legal analysis.	✓	3.99	4.06	98%
The judge was fair and impartial.	✓	4.08	4.21	97%
The judge avoids impropriety and the appearance of impropriety.	✓	4.50	4.41	102%
The judge avoids improper ex parte communications.	✓	4.57	4.49	102%
The judge's behavior demonstrated equal treatment of all persons or classes of persons.	✓	4.33	4.36	99%
The judge appears to consider both sides of an argument before rendering a decision.	✓	4.37	4.26	103%
The judge holds attorneys accountable for inappropriate conduct.	✓	3.73	3.97	94%
The judge's oral communication while in court is clear and logical.	✓	4.19	4.26	98%
The judge promotes public trust and confidence in the courts through his or her conduct on the bench.	✓	4.24	4.29	99%
The judge respects the time of the participants and understands the personal and financial costs they may be incurring.	✓	3.31	4.15	80%
The judge is prepared for argument and hearings.	✓	4.24	4.29	99%
The judge treats all attorneys with equal courtesy and respect.	✓	4.16	4.39	95%
The judge rules in a timely manner.	✓	3.65	4.24	86%
The judge realistically manages his or her calendar.	✓	3.33	4.20	79%
The judge convened court without undue delay.	✓	4.02	4.28	94%
The judge provides the parties due process; namely, advance notice of issues to be heard an adequate opportunity to prepare and a meaningful opportunity to be heard.	✓	4.34	4.32	100%
The judge acts to ensure that linguistic/cultural differences or disabilities do not unfairly limit access to the justice system.	✓	4.52	4.48	101%

Juror Survey Scores:

Below are listed: 1) the juror survey questions; 2) a checkmark to show that the judge met or exceeded the statutory “pass” of 3.0, or an “x” to indicate the judge scored below 3.0 on that question; 3) the judge’s average score on each question; 4) the average score on each question of all judges on the same level of court; and 5) the judge’s average score as a percent of the peer group average score.

A judge must receive an average score of at least 3.0 on 80% of the questions to meet minimum performance standards.

Juror Question	Statutory Pass: 3.0	Westfall	Peer Avg.	% of Peer Avg.
The judge's behavior demonstrated equal treatment of all persons or classes of persons.	✓	4.69	4.85	97%
The judge is prepared for argument and hearings.	✓	4.59	4.80	96%
The judge convened court without undue delay.	✓	4.34	4.65	93%
The judge did not allow his or her personal beliefs to inappropriately influence the proceedings.	✓	4.79	4.89	98%
The judge made sure that everyone's behavior in the courtroom was proper.	✓	4.79	4.82	99%
The judge paid attention to the proceedings in the courtroom.	✓	4.62	4.82	96%
When the judge explained to the jury the reasons for his or her decision, I understood.	✓	4.57	4.64	98%
Based on the judge's explanations, I clearly understood my role and responsibility as a juror.	✓	4.85	4.88	99%
The jury instructions from the judge were clear and understandable.	✓	4.76	4.85	98%
Based on the judge's explanations, I understood the evidence I could or could not consider.	✓	4.52	4.68	96%
The judge demonstrated courtesy toward the attorneys, court staff, litigants and others in the court room.	✓	4.85	4.87	100%
The judge made me feel that the court system is fair.	✓	4.69	4.76	99%
The judge took the case seriously.	✓	4.64	4.82	96%
The judge treated the jury with respect.	✓	4.78	4.93	97%
The judge provided recesses (breaks) in the trial that were adequate	✓	4.64	4.81	97%
My experience with the judge helped me understand the role of the jury in the legal system.	✓	4.64	4.79	97%

Adjective Summary

Survey respondents were asked to select adjectives that best described the judge. Results are shown from each respondent group. The adjectives highlighted in green are “positive” adjectives, while those in red are “negative.”

Westfall			
Attorney		Juror	
Attentive	32	Attentive	22
Calm	28	Calm	26
Confident	30	Confident	28
Considerate	23	Considerate	28
Consistent	21	Consistent	27
Intelligent	34	Intelligent	35
Knowledgeable	37	Knowledgeable	43
Patient	26	Patient	23
Polite	22	Polite	37
Receptive	14	Receptive	9
Arrogant	3	Arrogant	0
Cantankerous	0	Cantankerous	0
Defensive	4	Defensive	0
Dismissive	4	Dismissive	0
Disrespectful	1	Disrespectful	0
Flippant	1	Flippant	0
Impatient	5	Impatient	0
Indecisive	2	Indecisive	0
Rude	0	Rude	0

Positive	267	Positive	278
Negative	20	Negative	0
Positive	93%	Positive	100%

REPORT OF COURTROOM OBSERVATIONS FOR JUDGE MICHAEL WESTFALL

Five observers wrote 108 codable units that were relevant to 15 of the 17 criteria. Two observers reported that the judge was aware that JPEC observers were present and two reported that the judge was not aware (one did not comment).

Overview

WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"> • All observers were positive about Judge Westfall. One observer felt Judge Westfall’s demeanor should serve as a model for other judges. • All observers reported that Judge Westfall was courteous and patient in all situations, notably with emotional and difficult participants. His demeanor was firm and serious but also kind and caring, and he exercised subtle but effective control of a very busy courtroom, maintaining its calm decorum as well as warm atmosphere. Four observers emphasized his graciousness in accommodating participants’ schedules, and his excellent preparation. • All observers reported Judge Westfall’s thorough, patient, and effective explanations of his decisions, and his consistent encouragement of participants from both sides of every case to express their perspective. Three observers noted that Judge Westfall was concerned that all participants understood their rights, the proceedings, and his explanations. • Three observers reported that they would feel comfortable appearing before Judge Westfall (two did not comment).
MINORITY OBSERVATIONS	<ul style="list-style-type: none"> • None
ANOMALOUS COMMENTS	<ul style="list-style-type: none"> • None

<i>Numerical ratings:</i>	<i>Observer 1</i>	<i>Observer 2</i>	<i>Observer 3</i>	<i>Observer 4</i>	<i>Observer 5</i>
Neutrality	4	3	5	4	4
Respect	4	3	5	4	4
Ability to earn trust	5	3	5	4	4
Skill at providing voice	5	3	5	4	4

Summary and *exemplar language* of five observers’ comments

<i>RESPECTFUL BEHAVIORS</i>	
Listening & focus	Three observers reported that Judge Westfall <i>listened very carefully</i> often <i>repeated back</i> “What I’m hearing you say” <i>for clarification</i> . His <i>focus was on those appearing before him</i> .
Well-prepared & efficient	Three observers particularly emphasized that Judge Westfall was <i>clearly very well prepared</i> , and <i>began each case with remarks and perceptive comments</i> that showed <i>he had reviewed the file</i> . One observer was impressed that the judge <i>apparently anticipated events</i> , and <i>remained calm</i> while <i>many sheriffs</i> restrained a victim’s brother who tried to attack her murderer.
Respect for others’ time	Four observers reported that Judge Westfall began court on time or apologized for any delay. He <i>graciously complied</i> with requests to schedule cases at participant’s convenience, for example changing the order of cases to accommodate an attorney representing clients in several courts, allowing litigants <i>who traveled considerable distances to schedule their reappearance at their convenience</i> , and <i>taking some time to find a date to review a case before a soldier was deployed</i> .

Respectful behavior generally	Two observers reported that Judge Westfall called all defendants <i>by name rather than number</i> , and was <i>complimentary when appropriate, making an example</i> of one defendant to the full courtroom <i>when they complied in good fashion</i> , saying “Now this is what everyone is supposed to do”, and telling another “I’m impressed with how well you’ve done”.
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RESPECTFUL TONE

Courtesy, politeness and patience	All observers emphasized Judge Westfall’s courtesy and patience. He <i>acknowledged</i> all present with a “good morning”, used <i>proper names and honorifics</i> , and was <i>equally courteous</i> to all whether <i>affluent or in custody</i> . He treated a defendant’s <i>very emotional wife and mother with dignity and respect</i> , and in one case <i>held his composure</i> with a <i>ranting and raving</i> inmate when all the attorneys and public defenders had lost patience. He <i>managed this in a unique way</i> by having the defendant <i>settle down and read the statute</i> which <i>helped everyone focus and carry on</i> .
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Courtroom tone & atmosphere	All observers reported that Judge Westfall’s demeanor was <i>firm, serious</i> and <i>professional</i> , but also <i>kind, caring, and compassionate</i> with a <i>small smile for all</i> persons. He was <i>comfortable in his role</i> , always <i>demonstrated he was in charge</i> , and was <i>subtle and effective in controlling</i> the atmosphere in court and maintaining <i>decorum and calm</i> even with the many emotional defendants. One observer felt Judge Westfall should be a model for other judges: <i>not dramatic or lackadaisical or extreme in any respect but, like a good cup of coffee, strong and dependable</i> . The bailiff’s traditional opening set a serious tone in the courtroom, and one observer felt the warm atmosphere and congeniality of attorneys was a reflection on Judge Westfall.
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Body language	Three observers reported that Judge Westfall <i>made eye contact</i> and always <i>sat back and listened attentively</i> , looking at speakers. His <i>consistent posture</i> of sitting and closing hands was a <i>real strength</i> . In one case Judge Westfall’s <i>facial expression was of slight exasperation</i> when a defendant accused of sexual relations with a 14 year old requested he read many letters of support.
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NEUTRALITY

Consistent and equal treatment	Three observers reported that Judge Westfall <i>consistently asked for input from both sides</i> and was <i>careful to show</i> he considered their responses <i>of equal value</i> . While the Judge knew most participants from this small community he was not affected by personal prejudices in decisions. One observer experienced uncertainty when the judge reminded a young defendant that he had <i>represented his father in his parent’s divorce</i> . The observer did not know whether to think this was <i>appropriate</i> or whether the judge <i>should have recused himself</i> .
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Acts with concern for individual needs	Three observers reported that Judge Westfall was concerned for the interest of all participants, but took particular interest in the safety and welfare of children in divorce cases.
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Expresses concern for the individual	Three observers reported that Judge Westfall expressed his concern for the welfare of participants, for example <i>strongly advising</i> both husband and wife in a divorce to seek independent legal help, <i>sympathizing with defendants about their obligations</i> and giving instructions about how they <i>might be mitigated</i> , and expressing concern for a citizen selling property for a fraction of its value and only permitting the sale when his reasons were explained.
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Unhurried and careful	One observer reported that Judge Westfall never rushed participants yet did move cases along in a very efficient manner.
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VOICE

Considered voice	<p>All observers reported that Judge Westfall <i>encouraged participants to express their perspectives</i> and was <i>genuinely concerned that all sides had ample time and opportunity to say what they wanted</i>. He was <i>careful after reading charges</i> to ask defendants <i>what they had to say</i> about them and for them to <i>comment after he announced their sentences</i>. One observer noted several cases in which the judge asked parties with a disagreement over an issue “Please explain so I can understand exactly where the disagreement is”, and both parties were <i>given plenty of opportunity to present their side</i>.</p> <p>He demonstrated that he took defendants’ perspectives into consideration, in one case, after <i>patiently reading through letters of support presenting a believable argument that a defendant was trying to “protect” those that he loved</i>; the judge gave him <i>validation of his argument</i> but ruled that <i>he had clearly violated the law</i>.</p>
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COMMUNICATION

Communicates clearly	<p>Two observers reported that Judge Westfall was very clear and concise, and skilled in assessing complicated issues reducing arguments or histories to a few succinct sentences.</p>
Ensures information understood	<p>Three observers reported that Judge Westfall was <i>unstinting in his efforts</i> to make certain that unrepresented parties <i>knew the options available</i>, and was concerned when <i>emotional defendants</i> planned to plead guilty, in one case <i>asking an attorney if his client</i> “understands enough to be sentenced today?” He was concerned with a woman’s understanding of English and <i>requested an interpreter</i> even though the <i>woman responded she did understand</i> the proceedings.</p>
Provides adequate explanations	<p>All observers particularly reported with numerous examples that Judge Westfall was <i>very good</i> at thoroughly and <i>patiently...explaining the reasoning for his decisions</i>, and thereby <i>diffusing potentially emotional reactions</i>, explaining <i>his limits according to the law</i>, and <i>holding defendants accountable</i> for their behavior. In one case he explained that his <i>denial of credit</i> towards fines for payments made for counseling was because the defendant had <i>not met time requirements for completing a program</i>, but then told her she could <i>submit a request for review to the County Attorney</i>. He <i>took time to explain</i> to a nervous older woman why he <i>could not accept her word</i> about a matter and that she <i>needed to get an affidavit and bring in bank statements</i>, and he set a new date <i>with sufficient time to do this</i>. In another case he explained why a defendant’s lack of completion of any requirements was leading the judge to question his decision to give probation.</p>
